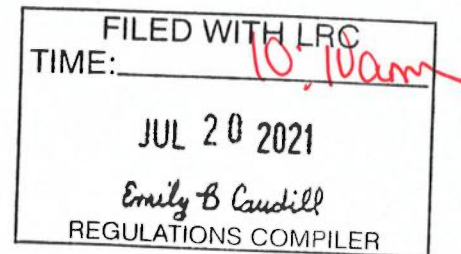


NOTICE

Amendment to 803 KAR 2:330E, Occupational Exposure to COVID-19, was filed with the Legislative Research Commission on July 20, 2021.

The amendment is posted at <https://legislature.ky.gov>. Select the Kentucky Law Tab, Kentucky Administrative Regulations, KAR List by Title, then Title 803 Labor Cabinet and scroll down to the regulation under Chapter 2 Occupational Safety and Health.

Changes to the regulation and public hearing information is available at the aforementioned website or in the pages below following this notice.



STATEMENT OF EMERGENCY
803 KAR 2:330E

This emergency administrative regulation is promulgated to meet an imminent threat to public health, safety, or welfare, to prevent a loss of federal funds, and ensure compliance with federal mandates.

Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to Kentucky. On June 21, 2021, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) to protect healthcare and healthcare support service workers from occupational exposure to coronavirus disease 2019 (COVID-19) in settings where people with COVID-19 are reasonably expected to be present. OSHA determined that employee exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) presents a grave danger to workers in all healthcare settings where people with COVID-19 are reasonably expected to be present. OSHA also determined that an ETS is necessary to protect healthcare and healthcare support employees in covered healthcare settings from exposures to SARS-CoV-2. During the period of the ETS, covered healthcare employers must develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace. Covered employers must also implement other requirements established in the ETS to reduce transmission of COVID-19 in their workplaces.

It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding. Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and it must remain in effect for the duration of OSHA's ETS.

This emergency administrative regulation will be not replaced by an ordinary administrative regulation since OSHA has not promulgated a permanent final rule.


ANDY BESHEAR, Governor


JAMIE LINK, Secretary
Labor Cabinet

1 Labor Cabinet
2 Department of Workplace Standards
3 Division of Occupational Safety and Health Compliance
4 Division of Occupational Safety and Health Education and Training
5 (New emergency administrative regulation)
6 803 KAR 2:330E. Occupational Exposure to COVID-19.
7 RELATES TO: KRS 338.015, 29 C.F.R. 1910.502-509
8 STATUTORY AUTHORITY: KRS 338.051, 338.061
9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky
10 Occupational Safety and Health Standards Board to promulgate occupational safety and health
11 administrative regulations and authorizes the chairman to adopt federal standards without board
12 approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to
13 establish, modify or repeal standards and reference federal standards. This emergency temporary
14 administrative regulation establishes federal requirements relating to COVID-19 in healthcare
15 settings.
16 Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or
17 Commissioner, Department of Workplace Standards, Labor Cabinet.
18 (2) "C.F.R." means Code of Federal Regulations.
19 (3) "Employee" is defined by KRS 338.015(2).
20 (4) "Employer" is defined by KRS 338.015(1).
21 (5) "Occupational Safety and Health Act" or "OSH Act" or OSHA" means KRS Chapter 338.

1 (6) "Secretary of Labor" means the Secretary of the United States Department of Labor or the
2 Secretary of the Labor Cabinet.

3 (7) "Section 11(c) of the OSH Act" means KRS 338.121(3).

4 Section 2. Except as modified by the definitions in Section 1 and the requirements in Section 3 of
5 this emergency administrative regulation, an employer shall comply with 29 C.F.R. Part 1910,
6 Subpart U, COVID-19 Emergency Temporary Standard, published in the June 21, 2021 Federal
7 Register, Volume 86, Number 116.

8 Section 3. (1)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R.
9 1910.502(r)(1)(ii).

10 (b) An employer shall report COVID-19 hospitalizations pursuant to 803 KAR 2:181 or 803
11 KAR 2:181E, whichever is in effect.

12 (2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R.
13 1910.502(r)(2).

14 (b) An employer shall follow the requirements established in 803 KAR 2:181 or 803 KAR
15 2:181E, whichever is in effect, when reporting COVID-19 fatalities and hospitalizations.

As approved by



Jamie Link, Secretary of Labor

07/20/2021

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on September 21, 2021 at 10:00 am. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8)(b) (2020) and the continuing state of emergency. Public access to the meeting will be available at

<https://us02web.zoom.us/j/87800440284?pwd=dUZHamFJeTk0TUZpWlQ3UHp5cE9vdz09>, passcode 064833; or by telephone at (713) 353-0212, or (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:330E

Contact person: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation defines terms. Section 2 requires employers to comply with the requirements of 29 CFR Part 1910, Subpart U, COVID-19 Emergency Temporary Standard except as modified by the definitions in Section 1 and requirements of Section 3 of this emergency administrative regulation. Section 3 amends the reporting requirement in the June 21, 2021 final rule to comport with the reporting requirement established in 803 KAR 2:181 or 803 KAR 2:181E, whichever is in effect.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and must remain in effect for the duration of OSHA's ETS.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures the state is as effective as the federal requirement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable.

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects employers in the Commonwealth engaged in all activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA does not provide a breakdown of the cost for Kentucky entities to comply with the final rule. OSHA estimates the costs of the rule are \$3,969,645,432, the benefits are \$26,851,729,237, with a net benefit of \$22,882,083,805. Section VI.B. of OSHA's June 21, 2021 final rule provides a detailed economic feasibility analysis. There is no additional cost to the OSH Program to implement this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirement protects healthcare and healthcare support employees in covered healthcare settings from exposures to SARS-CoV-2.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

(b) On a continuing basis: There are no new costs to the OSH Program associated with this emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this emergency administrative regulation. There is no need to increase funding for this emergency administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:330E

Agency Contact: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 USC 667

2. State compliance standards.

The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i). Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and must remain in effect for the duration of OSHA's ETS.

3. Minimum or uniform standards contained in the federal mandate.

The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i). Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and must remain in effect for the duration of OSHA's ETS.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 803 KAR 2:330E

Contact Person: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This emergency administrative regulation affects any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i),

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Not determined.

(d) How much will it cost to administer this program for subsequent years? Not determined.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: OSHA does not provide a breakdown of the cost for Kentucky entities to comply with the final rule. OSHA estimates the national costs of the rule are \$3,969,645,432 and the benefits are \$26,851,729,237, with a net benefit of \$22,882,083,805. Section VI.B. of OSHA's June 21, 2021 final rule provides a detailed economic feasibility analysis. There is no additional cost to the OSH Program to implement this emergency administrative regulation.

Justification

Federal Register, Vol. 86, No. 116, Monday, June 21, 2021

<https://www.govinfo.gov/content/pkg/FR-2021-06-21/pdf/FR-2021-06-21.pdf>

Public Law 91-596 84 STAT. 1590 (OSH Act of 1970)

Section 18, State Jurisdiction and State Plans

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgement --

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment....

29 CFR 1902.3(c), Standards

(1) The State plan shall include or provide for the development or adoption of, and contain assurances that the State will continue to develop or adopt, standards which are or will be at least as effective as those promulgated under Section 6 of the Act....

29 CFR 1902.3(d), Enforcement

(1) The State plan shall provide a program for the enforcement of the State standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the State's enforcement program will continue to be at least as effective as the Federal program....

(2) The State plan shall require employers to comply with all applicable State occupational safety and health standards covered by the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

29 CFR 1902.3

(j) Employer records and reports. The State plan shall provide assurances that employers covered by the plan will maintain records and make reports to the Assistant Secretary in the same manner and to the same extent as if the plan were not in effect.

29 CFR 1902.7, Injury and Illness Recording and Reporting Requirements

(a) Injury and illness recording and reporting requirements promulgated by State-Plan States must be substantially identical to those in 29 CFR part 1904 on recording and reporting occupational injuries and illnesses. State-Plan States must promulgate recording and reporting requirements that are the same as the Federal requirements for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements that are promulgated by State-Plan States may be more stringent than, or supplemental to, the Federal requirements, but, because of the unique nature of the national recordkeeping program, States must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives. State-Plan States must extend the scope of their regulation to State and local government employers.

29 CFR 1904.37, State Recordkeeping Regulations

(a) Basic requirement. Some States operate their own OSHA programs, under the authority of a State plan as approved by OSHA. States operating OSHA-approved State plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in this part (see 29 CFR 1902.3(j), 29 CFR 1902.7, and 29 CFR 1956.10(i)).

(b)(1) State-Plan States must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are recorded.

(b)(2) For other Part 1904 provisions (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement), State-Plan State requirements may be more stringent than or supplemental to the Federal requirements, but because of the unique nature of the national recordkeeping program, States must consult with and obtain approval of any such requirements.

29 CFR 1953.1

(a) This part implements the provisions of section 18 of the Occupational Safety and Health Act of 1970 ("OSH Act" or the "Act") which provides for State plans for the development and enforcement of State occupational safety and health standards. These plans must meet the criteria in section 18(c) of the Act, and part 1902 of this chapter (for plans covering both private sector and State and local government employers) or part 1956 of this chapter (for plans covering only State and local government employers), either at the time of submission or -- where the plan is developmental -- within the three year period immediately following commencement of the plan's operation. Approval of a State plan is based on a finding that the State has, or will have, a program, pursuant to appropriate State law, for the adoption and enforcement of State standards that is "at least as effective" as the Federal program.

(b) When submitting plans, the States provide assurances that they will continue to meet the requirements in section 18(c) of the Act and part 1902 or part 1956 of this chapter for a program that is "at least as effective" as the Federal. Such assurances are a fundamental basis for approval of plans. (See § 1902.3 and § 1956.2 of this chapter.)....

29 CFR 1953.5, Special provisions for standards changes

(b) Emergency temporary standards. (1) Immediately upon publication of an emergency temporary standard in the Federal Register, OSHA shall advise the States of the standard and that a Federal program change supplement shall be required. This notification must also provide that the State has 30 days after the date of promulgation of the Federal standard to adopt a State emergency temporary standard if the State plan covers that issue. The State may demonstrate that promulgation of an emergency temporary standard is not necessary because the State standard is already the same as or at least as effective as the Federal standard change. The State standard must remain in effect for the duration of the Federal emergency temporary standard which may not exceed six (6) months.

29 CFR 1956.2, General Policies

(a) Policy. The Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) will approve a State plan which provides an occupational safety and health program for the protection of State and local government employees (hereinafter State and local government employees are referred to as public employees) that in his judgment meets or will meet the criteria set forth in 1956.10. Included among these criteria is the requirement that the State plan for public employees (hereinafter such a plan will be referred to as the plan) provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced under section 6 of the Act....

29 CFR 1956.10, Specific Criteria

(i) Employer records and reports. The plan shall provide assurances that public employers covered by the plan will maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private employers under the Act.